

## **REMARKS**

In response to the above-identified Final Office Action ("Action"), Applicants submit the following remarks and seek reconsideration thereof. Claims 1-15 and 17-31 are pending in the present application. Claims 1-7, 10, 12-15, 20, 23-27, 29 and 31 are rejected and claims 8, 9, 11, 17-19, 21, 22, 28 and 30 are objected to. In this response, claim 1 is amended, no claims are cancelled and no claims are added.

In the outstanding Action, claims 1-7, 10, 12-15, 20, 23-27, 29 and 31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US Patent No. 5,347,262 issued to Thurmond *et al.* ("Thurmond").

In the outstanding Action, claims 8, 9, 11, 17-19, 21, 22, 28 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant has amended claim 1 to clearly distinguish over the device described by Thurmond. The device described by Thurmond is not a device used to tag and identify cattle, but is an audible alarm system, such as the type used in retail stores for tagging clothing.

Although prior claim 1 referenced that the device is for identifying and tagging cattle including a structure for a fixing means to the ear of the animal, it is assumed that the Examiner has further interpreted that the device described in Thurmond could be considered suitable for this purpose as it can be attached to an animal, and the mere visual or aural detection of the tag on the animal could provide identification.

For this reason, claim 1 has been amended to more clearly define that the device is directed to "An animal tagging and identification electronic button tag", which the device described in Thurmond clearly is not, as it is used to prevent theft of retail items.

Further, a limitation has been included that "the transponder is arranged to uniquely identify an animal in a group of animals". The device in Thurmond is not able to uniquely identify an animal in a group of animals but merely emits an audible signal upon its disassembly.

Such an audible signal would not enable the unique identification of an animal in a herd, especially if the device has been removed from the animal in order to activate the audible signal.

Applicant further disagrees with the examiner's assertion that the device in Thurmond includes a programmable transponder merely because it has a switch that triggers a transponder. The transponder in Thurmond merely operates according to the switch condition, and is not programmable to operate in any other way i.e. it operates in a single fixed state and that fixed state is not programmable.

Thus, claim 1 differs from Thurmond in at least two patentably distinguishable ways. Firstly, it is directed to an animal tagging and identification electronic button tag arranged to uniquely identify an animal, and second it includes a programmable transponder. Thus, Applicant submits that claim 1, and its dependent claims 2-12 which incorporate the patentably distinct limitations of claim 1 are also allowable over the prior art for the same reasons.

As to independent claim 13, although it does not include the claim 1 limitation of the transponder being arranged to uniquely identify an animal in a group of animals, it does include the limitation of being directed to a button tag for tagging and identifying cattle, and including a transponder capable of being programmed. Independent claim 23 contains similar limitations as claim 13. In this connection, in addition to Thurmond being directed to a theft deterrent device rather than an animal identification and tagging device, Thurmond does not teach a transponder capable of being programmed. In this connection, the Examiner cites the summary of the invention, lines 20-30 of Thurmond to support this teaching. However, Thurmond merely discloses that a transponder is coupled to the switch wherein the switch operates to cause an alarm to be sounded in response to the application of a predetermined threshold separation force. The purpose, as stated in Thurmond is so that should a thief desiring to steal clothing tamper with the device to remove the device so that it would not trigger an alarm when the piece of clothing is attempted to be removed from the retail store, the act of tampering would set off an alarm. In Applicant's specification, it is noted that the transponder comprises a coil and programmable microprocessor. Although the limitations from the specification are not read into the claims, Applicant submits that a person skilled in the art would recognize that a programmable transponder is one which includes a microprocessor or equivalent element which

can be programmed. The transponder of Thurmond et al. contains no teaching or suggestions whatsoever regarding its programmability. Since the programmability of the transponder is not taught or suggested by Thurmond et al., reconsideration and withdrawal of the rejection of claims 13 and 23 is requested, as well as their respective dependent claims 14, 15 and 17-22 and 24-31.

Although Applicant appreciates the indication of allowability of claims 8, 9, 11, 17-19, 21, 22, 28 and 30, Applicant believes all of the claims contain patentable subject matter for the reasons noted above.

### CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-15 and 17-31, are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

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Dated: August 7, 2008

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#### CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.

  
Jessica Hoester

August 7, 2008